

INSURANCE DIVISION[191]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 523A.809, the Insurance Division hereby gives Notice of Intended Action to rescind Chapter 100, “General Provisions,” Chapter 101, “Trust Deposits and Trust Funds,” Chapter 102, “Warehoused Merchandise,” Chapter 103, “Licensing of Preneed Sellers and Sales Agents,” Chapter 104, “Continuing Education for Sales Agents,” Chapter 105, “Standards of Conduct and Prohibited Practices,” and Chapter 106, “Disciplinary Procedures,” Iowa Administrative Code, and to adopt new Chapters 100 to 106 with the same titles.

The amendments that rescinded 191—Chapter 19 and that adopted existing 191—Chapters 100 to 106 were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on October 24, 2007, as **ARC 6333B**, and became effective September 28, 2007. Notice of Intended Action to solicit comments on that submission was published in the October 24, 2007, Iowa Administrative Bulletin as **ARC 6334B**. That Notice of Intended Action was expired. This proposed amendment rescinds Chapters 100 to 106 and adopts new Chapters 100 to 106 in lieu thereof.

These chapters implement and administer the provisions of Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, which regulate the sale of cemetery merchandise, funeral merchandise, funeral services and any combination of these items. The Division intends that persons operating as preneed sellers and sales agents in Iowa will comply with these rules beginning October 1, 2008.

Any interested person may make written suggestions or comments on these proposed chapters on or before July 22, 2008. Such written materials should be directed to Dennis Britson, Iowa Securities and Regulated Industries Bureau, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319; fax (515)281-3059.

Also, there will be a public hearing on July 22, 2008, at 2 p.m. at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Division and advise of specific needs.

These rules are intended to implement Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, [2007 Iowa Code Supplement chapter 523A], and 2008 Iowa Acts, Senate File 2349 and House File 2555.

The following amendment is proposed.

ITEM 1. Rescind 191—Chapter 100 and adopt the following **new** chapter in lieu thereof:

CHAPTER 100 GENERAL PROVISIONS

191—100.1(523A) Purpose. This chapter and 191—Chapters 101 through 106 are promulgated to implement and administer the provisions of Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559 [2007 Iowa Code Supplement chapter 523A], and 2008 Iowa Acts, Senate File 2349 and House File 2555, which regulate the sale of cemetery merchandise, funeral merchandise, funeral services and any combination of those items. The provisions of this chapter also apply to 191—Chapters 101 through 106.

191—100.2(523A) Definitions. For purposes of 191—Chapters 100 through 106, the definitions in Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, are incorporated by reference. In addition, the following definitions shall apply:

“*Active license*” means a license that is in effect and in good standing.

“*Commissioner*” means the Iowa insurance commissioner or staff of the Iowa insurance division as designated by the commissioner.

“*Commissioner’s Web site*” means the Web site of the Iowa insurance division, www.iid.state.ia.us.

“*Continuing education*” means planned, organized learning acts designed to maintain, improve, or expand a licensee’s knowledge and skills to maintain and improve compliance with 191—Chapters 100 through 106 and Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, and to maintain and improve the safety and welfare of the public.

“*Credit*” means at least 50 minutes spent by a licensee in actual attendance at and in completion of an approved continuing education activity. A credit may also be given for independent study.

“*Discipline*” means any civil penalty or sanction that the commissioner imposes upon a licensee.

“*Expired license*” means a license that has not been renewed by the renewal date.

“*Inactive license*” means a license that has been placed on inactive status by the commissioner at the request of the licensee.

“*Independent study*” means a subject, program or activity that a person pursues autonomously that meets the standards for approval criteria in these rules and includes a test at the conclusion of the study. Independent study includes programs conducted using television, the Internet, video, sound-recorded programs, correspondence work, and other similar media.

“*License*” means a preneed seller license or a sales agent license issued pursuant to 191—Chapter 103 or 191—Chapter 104 and Iowa Code chapter 523A.

“*License certificate*” means any document issued by the commissioner as evidence that a person is licensed with the commissioner.

“*Licensed person*” means any person who holds a preneed seller or sales agent license pursuant to Iowa Code chapter 523A, including any person who holds an inactive license.

“*Licensee*” means any person to whom the commissioner has issued a preneed seller license or sales agent license.

“*License renewal date*” means the date assigned by the commissioner for renewal of a license.

“*Licensure*” means the granting of a license by the commissioner pursuant to Iowa Code chapter 523A.

“*Review*” means the commissioner’s verification of satisfactory completion of continuing education requirements during a specified time period for certain licensees and persons, as selected by the commissioner, presenting or sponsoring continuing education activities.

“*Unlicensed person*” means any person who does not have a preneed seller or sales agent license pursuant to Iowa Code chapter 523A, including any person who surrendered a license to the commissioner and any person whose license was revoked by the commissioner.

191—100.3(523A) Contact and correspondence.

100.3(1) *Contact information.* All mailed complaints, inquiries and correspondence shall be sent to Securities and Regulated Industries Bureau, Iowa Insurance Division, 340 Maple Street, Des Moines, Iowa 50319-0066. Telephone inquiries may be made at (877)955-1212. E-mail correspondence may be made through the commissioner’s Web site: www.iid.state.ia.us.

100.3(2) *Complaints, inquiries and correspondence.* The commissioner may receive and process any complaint made regarding cemetery merchandise, funeral merchandise, funeral services or any combination of those items, or regarding a sales agent or a preneed seller that alleges certain acts or practices which may constitute one or more violations of the provisions of 191—Chapters 100 to 106 or of Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, or 2008 Iowa Acts, Senate File 2349 and House File 2555. Where appropriate, the commissioner may refer complaints, in whole or in part, to other agencies. Any member of the public or the industry, or any federal, state, or local official, may make and file a complaint with the commissioner. Complaints may be received from sources outside the state of Iowa and processed in the same manner as those originating in Iowa. If required by the commissioner, complaints shall be made on forms prescribed and provided by the commissioner.

100.3(3) *Forms and instructions.* Copies of all required forms and instructions are available on the commissioner’s Web site and may be obtained by mail.

191—100.4(523A) Fees.

100.4(1) *Manner of payment.* Fees required by 191—Chapters 100 through 106 may be paid by check, credit card, or electronically, if available, or as directed by the commissioner.

100.4(2) *Nonrefundable.* Fees are not refundable.

100.4(3) *Fee for paper filing.* The commissioner shall assess a \$25 processing fee, to reimburse the commissioner for expenses in processing the filing, for any filing submitted in a nonelectronic format, if electronic filing is available through the commissioner's Web site.

100.4(4) *Specific fees.* Except as stated in these rules, fees are set by statute.

a. The license fee for a preneed seller pursuant to 191—paragraph 103.2(1) “g” is \$100 plus \$15 for each criminal history background check request that the commissioner needs to make.

b. The license fee for a sales agent pursuant to 191—paragraph 103.2(2) “f” is \$20 plus \$15 for each criminal history background check request that the commissioner needs to make.

c. The fee for a four-year license renewal for a preneed seller or sales agent pursuant to 191—subrule 103.4(3) is \$20.

These rules are intended to implement Iowa Code chapter 523A, and 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.

ITEM 2. Rescind 191—Chapter 101 and adopt the following **new** chapter in lieu thereof:

CHAPTER 101

TRUST DEPOSITS AND TRUST FUNDS

191—101.1(523A) Trust income withdrawals. Trust income may be withdrawn on purchase agreements executed on or after July 1, 2007, as set forth in this chapter, by any preneed seller that is a limited liability corporation that was formed in 2002 for the purpose of purchasing a cemetery from a foreign entity reorganizing under bankruptcy, if the corporation is comprised of six establishments all located within the same county.

191—101.2(523A) Amount of trust income withdrawn. The amount of income withdrawn pursuant to rule 101.1(523A) may not exceed the difference between the amount needed to adjust the trust funds for inflation, as set by the commissioner based on the consumer price index in rule 101.7(523A), and the interest or income earned during the preceding year but, in any event, may not exceed 50 percent of the total interest or income on a calendar-year basis. A portion of trust income must remain in trust and cannot be withdrawn by the preneed seller. This amount is the greater of the following: one-half of the aggregate income and interest credited to the trust during the preceding calendar year; or an amount equal to the consumer price index adjustment for the preceding year.

191—101.3(523A) Allocation of trust income to purchasers' accounts. Income distributions withdrawn from the trust shall be allocated to purchasers' accounts remaining in the trust at the end of the month in which the distribution was made and on the basis that each such account's income balance for that month bears to the aggregate income balances of all such accounts. By September 1, any income not withdrawn pursuant to this chapter shall be allocated to purchasers' accounts remaining in trust at the end of the month in which the allocations were made.

191—101.4(523A) Credit for trust income withdrawn. The early withdrawal of interest or income under this chapter does not affect the purchaser's right to a credit of such interest or income in the event of a nonguaranteed price agreement, cancellation of the purchase agreement, or nonperformance by the preneed seller.

191—101.5(523A) Time period during which trust income may be withdrawn. Income withdrawals permitted by this chapter shall be made no later than 180 days after the calendar year in which the income was earned.

191—101.6(523A) Application of contract law. In any situation in which this chapter and the terms and conditions of a purchase agreement do not conflict, the terms and conditions of the purchase agreement shall govern the withdrawal of trust income and interest. The ability to withdraw income and interest may be limited or prohibited by the terms of a purchase agreement. However, in the event of a conflict with the limitations set forth in this chapter, the preneed seller must comply with the requirements of this chapter.

191—101.7(523A) Consumer price index adjustment.

101.7(1) Pursuant to Iowa Code Supplement sections 523A.201(8) and 523A.602(2)“b”(1), the commissioner sets the following inflation adjustment factors for the years listed for the purposes of calculating the amount of interest or income earned on amounts deposited in trust that must remain trust funds as an adjustment for inflation or to adjust the purchase price of merchandise and services in order to calculate the amount of a cancellation refund.

2007	4.1%
2006	2.5%
2005	3.4%
2004	3.3%
2003	1.9%
2002	2.4%
2001	1.6%
2000	3.4%
1999	2.7%
1998	1.6%
1997	1.7%
1996	3.3%
1995	2.5%
1994	2.7%
1993	2.7%
1992	2.9%
1991	3.1%
1990	6.1%
1989	4.6%
1988	4.4%
1987	4.4%

101.7(2) The inflation adjustment factors for years 2008 and later will be set by the commissioner and posted on the commissioner’s Web site.

191—101.8(523A) Cancellation refunds. The requirement set forth in Iowa Code Supplement section 523A.602(2)“b”(1) applies to any purchase agreement executed on or after July 1, 2001.

These rules are intended to implement Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.

ITEM 3. Rescind 191—Chapter 102 and adopt the following new chapter in lieu thereof:

CHAPTER 102
WAREHOUSED MERCHANDISE

191—102.1(523A) Funeral and cemetery merchandise delivered to the purchaser or warehoused.

102.1(1) *Applicability.* This chapter applies only to storage existing on or before July 1, 2007, under purchase agreements executed between July 1, 1987, and July 1, 2007. Effective July 1, 2007, warehousing is no longer an alternative to the trust requirements of Iowa Code chapter 523A.

102.1(2) *Approval of storage facilities by commissioner.* If a preneed seller receives approval in writing from the commissioner, the trust requirements of Iowa Code Supplement sections 523A.201 and 523A.202 do not apply, either to payments for outer burial containers made of either polystyrene or polypropylene or to cemetery merchandise delivered to the purchaser or stored in an independent third-party storage facility not owned or controlled by the preneed seller.

191—102.2(523A) Storage facilities. The commissioner shall approve a storage facility's application to be designated as an approved storage facility for purposes of rule 102.1(523A) upon satisfaction of the following conditions:

102.2(1) *Insurance coverage and financial condition.* The applicant must demonstrate that adequate insurance against loss and damage has been purchased and that the applicant's financial condition is commensurate with any financial obligations assumed in the operation of the storage facility. Proof of the applicant's financial condition shall include submission of audited financial statements completed in accordance with generally accepted accounting principles, which shall include the following:

- a. A balance sheet prepared as of a date within 120 days prior to the application; and
- b. For each of the three fiscal years preceding the date of the balance sheet or, if the applicant has been in existence less than three years, for the period of the applicant's existence, a profit and loss statement and any changes in financial position.

102.2(2) *Record-keeping system.* The applicant must demonstrate that the applicant has an adequate record-keeping system that records for each item in storage: an identification and a description; the ownership, name, and address of the preneed seller; an order number; the order date; and the storage date. The record-keeping system also must be able to provide an aggregate listing and numerical totals for the entire storage facility and for each state or province.

102.2(3) *Title.* The storage facility must undertake to deliver a minimum of two copies of some form of title certificate to the preneed seller, with at least one copy marked as the preneed seller's copy and at least one copy marked as the purchaser's copy. Each preneed seller shall be required to deliver at least one copy to the purchaser and to retain one copy in the preneed seller's records. Certificates of ownership should not be issued until the merchandise is stored in substantially complete condition.

102.2(4) *Delivery requirements.*

- a. The applicant must undertake to require the purchaser's signature, or the signature of the purchaser's legal representative, prior to the delivery of the cemetery merchandise.
- b. The storage facility must undertake not to accept prepayment of delivery expenses or charges. Appropriate written disclosure that delivery costs will be billed at the time of delivery shall be provided to the preneed seller.

102.2(5) *Storage requirements.* The storage facility must demonstrate that the applicant has an adequate storage system that provides both accessibility and protection against damage. The storage facility must undertake that all cemetery merchandise will be substantially complete prior to storage.

102.2(6) *Consent to audits and inspections.* The applicant must file a written consent authorizing audits, reviews and inspections by the commissioner.

102.2(7) *Statutory compliance with other state or provincial laws.* The applicant shall be in compliance with all applicable laws regulating the applicant's activities as a warehouse keeper, manufacturer, supplier, or preneed seller of cemetery merchandise.

102.2(8) *Identification or personalization of merchandise.* All cemetery merchandise must be appropriately marked, identified, and described in a manner such that it may be distinguished from other similar items of merchandise, unless the commissioner has given prior written waiver of this requirement upon a showing of good cause. In all instances, the storage facility's storage system shall allow for visual inspection and counting, have storage by type or style, identify the location of the

item by a shelf and bin- or slot-type system or reasonable alternative, and keep totals for each type of merchandise item in storage.

102.2(9) *Payment of accounts receivable.* The applicant shall undertake to require payment of all applicable accounts receivable within 90 days of the purchase of the cemetery merchandise.

102.2(10) *Audits and examinations.* The commissioner shall have the right to examine or cause to be examined the books, papers, records, memoranda or other documents of the storage facility and stored merchandise for the purpose of verifying compliance with Iowa Code chapter 523A and this chapter. Unless waived by the commissioner in writing, the transportation, meal and lodging expenses of the auditors and examiners shall be reimbursed by the storage facility.

102.2(11) *Reports.* The commissioner may request reports containing information about the storage program, including but not limited to the following:

a. A description of the storage facility, including the name, address of the principal business office, state or province of organization, date of organization, type of entity (e.g., corporation or partnership), and the location of all storage facilities;

b. A description of the storage program; and

c. A detailed description of all merchandise currently in storage, which shall include all of the following:

(1) The date the merchandise was first placed in storage;

(2) The full name of the purchaser or the person on whose behalf the merchandise was purchased;

(3) The location of the merchandise, which shall include the location within the facility utilizing a numbering system that provides the exact location of each item;

(4) The name and address of the preneed seller;

(5) The total number of items, by category, in storage at the facility for preneed sellers located in this state; and

(6) The total number of items, by category, in storage at the facility.

These rules are intended to implement Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.

ITEM 4. Rescind 191—Chapter 103 and adopt the following **new** chapter in lieu thereof:

CHAPTER 103

LICENSING OF PRENEED SELLERS AND SALES AGENTS

191—103.1(523A) Requirement for a preneed seller license or a sales agent license.

103.1(1) No person may sell or offer to sell cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, in Iowa if the sale of the merchandise or services is subject to Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, unless the person holds an active license.

103.1(2) No person may agree to perform any term of an agreement, whether or not pursuant to a written purchase agreement, to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, in Iowa if the sale of the merchandise or services is subject to Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, unless the person holds an active license.

103.1(3) At the time a purchase agreement is entered into, a person may not accept any payment or funding, including the assignment of ownership of or proceeds from an insurance policy or annuity, related to the purchase of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, in Iowa if the sale of the merchandise or services is subject to Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, unless the person holds an active license. This rule does not prevent payments to an unlicensed person upon the person's delivery of cemetery merchandise, funeral merchandise or funeral services after the death of a beneficiary, including the payment of the proceeds of an insurance policy or annuity at the time of death of the insured listed on the insurance policy or annuity.

191—103.2(523A) Application and licensing of preneed seller or sales agent.

103.2(1) *Preneed seller application.* A person that desires to be licensed as a preneed seller must satisfy the following requirements:

- a.* Submit a completed application form, designated by the commissioner, as set forth in subrule 103.2(3);
- b.* Appoint at least one sales agent, except if the preneed seller is a sole proprietor;
- c.* Submit a signed waiver allowing the commissioner to request and obtain criminal history data information, pursuant to Iowa Code Supplement section 523A.501(3) as amended by 2008 Iowa Acts, Senate File 2349, section 5, and House File 2555, section 47, for each owner and manager of the applicant, including, but not limited to, for each sole proprietor, partner, director, officer, managing partner, member, or shareholder with 10 percent or more of the stock who has the ability to control or direct control of trust funds under Iowa Code chapter 523A, as determined by the commissioner;
- d.* Provide a financial history, if requested by the commissioner, pursuant to Iowa Code Supplement section 523A.501(4) as amended by 2008 Iowa Acts, Senate File 2349, section 6, and House File 2555, section 48, for each owner and manager of the applicant, including, but not limited to, for each sole proprietor, partner, director, officer, managing partner, member, or shareholder with 10 percent or more of the stock;
- e.* Provide evidence of a fidelity bond or insurance if required by rule 191—105.5(523A);
- f.* Have not committed any act that is grounds for denial under subrule 103.2(4); and
- g.* Pay the appropriate license fee as set forth in rule 191—100.4(523A).

103.2(2) *Sales agent application.* An individual that desires to be licensed as a sales agent pursuant to Iowa Code Supplement section 523A.502 as amended by 2008 Iowa Acts, Senate File 2349, section 7, and House File 2555, sections 49 and 50, must satisfy the following requirements:

- a.* Be at least 18 years of age;
- b.* Be appointed by at least one preneed seller and submit evidence of that appointment;
- c.* Submit a completed application form, designated by the commissioner, as set forth in subrule 103.2(3);
- d.* Submit a signed waiver allowing the commissioner to request and obtain criminal history data information, pursuant to Iowa Code Supplement section 523A.501(3) as amended by 2008 Iowa Acts, Senate File 2349, section 5, and House File 2555, section 47;
- e.* Have not committed any act that is grounds for denial under subrule 103.2(4); and
- f.* Pay the appropriate license fee as set forth in rule 191—100.4(523A).

103.2(3) *Application form.* A person applying for a preneed seller license or sales agent license shall complete an application form designated by the commissioner in accordance with the instructions supplied with the form. The appropriate application form and instructions may be obtained from the commissioner's Web site.

103.2(4) *Approval or denial of applications.*

a. If the application form is not completed according to the instructions, or if all of the information in the instructions or requested by the commissioner is not provided, the commissioner shall send a deficiency letter to the applicant, identifying the problems with the license application and listing any required corrective action. The commissioner shall suspend review of the application until the applicant successfully provides the necessary information. If an applicant does not satisfy the terms of the deficiency letter within two months, the application will expire and a new application form must be submitted.

b. The commissioner may require any documents reasonably necessary to verify the information contained in the application or to verify that the individual making application has the character and competency required to receive a license. The commissioner also may request fingerprints and reimbursement of costs for investigating a criminal history, pursuant to Iowa Code Supplement section 523A.501(3) as amended by 2008 Iowa Acts, Senate File 2349, section 5, and House File 2555, section 47.

c. The commissioner shall conduct the criminal history data request and other investigations pursuant to Iowa Code Supplement section 523A.502(4) as amended by 2008 Iowa Acts, House File

2555, section 49. The commissioner's investigation of criminal history data and financial history shall be limited to persons who have the ability to control or direct control of trust funds under Iowa Code chapter 523A, as determined by the commissioner.

d. In order to determine whether to approve or deny an application for license, the commissioner shall review all information that is submitted with the application, submitted at the commissioner's request, obtained through criminal history investigation, and obtained through the financial history review, pursuant to Iowa Code Supplement sections 523A.501(3) and 523A.502(4) as amended by 2008 Iowa Acts, House File 2555, sections 47 and 49, respectively.

e. If the commissioner approves the application and accompanying information, the commissioner shall issue a license, the term of which shall be four years.

f. The commissioner may deny a license application based on information received during the application process or on any ground provided to discipline a license in 191—Chapter 105 or Iowa Code chapter 523A.

191—103.3(523A) Change of ownership or sale of business of preneed seller.

103.3(1) If there is a change in the ownership of a preneed seller, including any change of controlling interest in any corporation or other business entity, the preneed seller shall notify the commissioner of the change within 30 days of the sale and shall provide information as requested by the commissioner to obtain a new preneed seller license.

103.3(2) If all or part of a business entity that has a preneed seller license is sold in whole or in part, and the business entity has not canceled the license nor has the purchaser of that entity applied for a new license in the purchaser's name within 30 days of the sale, the license shall automatically terminate. For purposes of this rule, sale of a business entity includes any change of controlling interest in any corporation or other business entity.

103.3(3) Failure to notify the commissioner of a change of ownership or sale of all or part of a business as set forth in this rule may be a ground for penalty under 191—subrule 105.6(10).

191—103.4(523A) License renewal.

103.4(1) *License expiration.*

a. Preneed seller licenses expire on the last day of the month of the four-year anniversary of the issue date of the license.

b. Sales agent licenses expire on the last day of the birth month of the licensee four years after the issue date of the license.

103.4(2) *Application for renewal.* A licensee must submit an application for renewal to the commissioner at least 60 days in advance of the expiration date of the license. The licensee is responsible for renewing the license.

103.4(3) *Renewal application form.* An application to renew a preneed seller's license or a sales agent's license shall be submitted on a form required by the commissioner, as directed on the commissioner's Web site, and a renewal applicant shall comply with all instructions on the Web site. In addition:

a. The renewal application shall be accompanied by a fee as set out in rule 191—100.4(523A). Failure to include the proper amount shall be cause for suspension of the application pursuant to subrule 103.4(4).

b. A sales agent must have completed the continuing education required by 191—Chapter 104 and submit with the application documentation verifying completion, as directed on the commissioner's Web site.

103.4(4) *Deficiencies in the application.* If the application form is not completed according to the instructions, or if all of the information in the instructions or requested by the commissioner is not provided, the commissioner will send a deficiency letter to the applicant, identifying the problems with the license application and listing any required corrective action, and the commissioner will suspend review of the application until the applicant successfully completes the application form in accordance with the instructions. If an applicant does not satisfy the terms of the deficiency letter within two months,

the application shall expire, and a new application form must be submitted. If a licensee fails to submit a timely and sufficient renewal application, the license shall expire.

103.4(5) *Failure to file annual statement.* A sales agent license shall not be renewed if the sales agent did not comply with the requirement to file an annual report, as set forth in 191—paragraph 106.2(3) “a” and Iowa Code Supplement section 523A.502A.

103.4(6) *Inactive license, voluntary surrender and license reinstatement.*

a. If a licensed preneed seller does not have at least one appointed sales agent, or if a sales agent is not appointed with at least one preneed seller, the license shall be inactive until a sales agent has been appointed.

b. A preneed seller licensee or a sales agent licensee that has stated an intent to exit the preneed business may voluntarily surrender the license or request that the commissioner place the licensee’s license on inactive status.

c. A preneed seller or sales agent must request an inactive status from the commissioner or must surrender the license to the commissioner before the renewal due date or the license shall expire.

d. In no event may a license be inactive for more than 12 months.

e. A preneed seller or sales agent may apply for reinstatement of an inactive license up to 12 months after the license expiration date by submitting the following:

(1) An application for reinstatement, which may be obtained from the commissioner’s Web site;

(2) A consent and waiver form required for a background check, if determined necessary by the commissioner;

(3) A financial history for the interim time period after the license became inactive and before the application for reinstatement, if determined necessary by the commissioner;

(4) For a preneed seller, the name of at least one appointed sales agent or, for a sales agent, the name of at least one preneed seller;

(5) For a sales agent, proof of completion of continuing education requirements found in 191—Chapter 104; and

(6) A license fee as set forth in rule 191—100.4(523A), if determined applicable by the commissioner.

f. A preneed seller or sales agent that surrendered a license for a nondisciplinary reason more than 90 days before the expiration date of the license and stated an intent to exit the preneed business may file a request to reinstate the license. The request must be received by the commissioner within 90 days of the date the license was terminated by the commissioner and should include the information set forth in paragraph 103.4(6) “e.” The request will be granted if the preneed seller or sales agent is otherwise eligible to receive the license. If the request is not received within 90 days, the preneed seller or sales agent must apply for a new license.

191—103.5(523A) Denial of license applications or of applications for renewal.

103.5(1) *Notice of denial.* When the commissioner denies an application for an initial preneed seller license or for the renewal of a preneed seller license, the commissioner shall send a denial letter to the applicant by certified mail, return receipt requested, or in the manner of service of an original notice. The denial letter shall serve as notice of the denial and shall explain why the commissioner denied the application.

103.5(2) *Appeal.* An applicant that desires to contest the denial of an application may request a hearing before the commissioner pursuant to 191—Chapter 3 within 30 calendar days of the date the notice of denial is mailed. If a request for hearing is timely made, the commissioner shall promptly issue a notice of contested case hearing on the grounds asserted by the applicant. A failure to timely request a hearing constitutes failure to exhaust administrative remedies.

103.5(3) *Hearings.* License denial hearings under this chapter shall be conducted pursuant to 191—Chapter 3. License denial hearings and all documents related thereto are contested cases open to the public pursuant to Iowa Code chapters 17A and 22. While each party shall have the burden of establishing the matters asserted, the applicant shall have the ultimate burden of persuasion as to the applicant’s qualification for licensure.

191—103.6(523A) Reinstatement or reissuance of a license after suspension, revocation or forfeiture in connection with disciplinary matters; and forfeiture in lieu of compliance.

103.6(1) The term “reinstatement” as used in this rule means the reinstatement of a suspended license. The term “reissuance” as used in this rule means the issuance of a new license following either the revocation of a license or the forfeiture of a license in connection with a disciplinary matter. This rule does not apply to the reinstatement of an expired or inactive license.

103.6(2) Any preneed seller whose license has been revoked or suspended by order, or that forfeited a license in connection with a disciplinary matter, may apply to the commissioner for reinstatement or reissuance in accordance with the terms of the order of revocation or suspension or the order accepting the forfeiture.

a. All proceedings for reinstatement or reissuance shall be initiated by the applicant that shall file with the commissioner an application for reinstatement or reissuance of a license. Instructions regarding how to complete and file an application can be found on the commissioner’s Web site.

b. An application for reinstatement or reissuance shall allege facts which, if established, will be sufficient to enable the commissioner to determine that the basis of revocation, suspension or forfeiture of the applicant’s license no longer exists and that it will be in the public interest for the application to be granted. The burden of proof to establish such facts shall be on the applicant.

c. A preneed seller or sales agent may request reinstatement of a suspended license prior to the end of the suspension term.

d. Unless otherwise provided by law, if the order of revocation or suspension did not establish terms upon which reinstatement or reissuance may occur, or if the license was forfeited, an initial application for reinstatement or reissuance may not be made until at least one year has elapsed from the date of the order of the suspension (notwithstanding paragraph 103.6(2) “*c*”), revocation, or acceptance of the forfeiture of a license.

103.6(3) All proceedings upon the application for reinstatement or reissuance, including matters preliminary and ancillary thereto, shall be held in accordance with Iowa Code chapter 17A. Such application shall be docketed in the original case in which the original license was suspended, revoked, or forfeited, if a case exists.

103.6(4) An order of reinstatement or reissuance shall be based upon a written decision which incorporates findings of fact and conclusions of law. An order granting an application for reinstatement or reissuance may impose such terms and conditions as the commissioner deems desirable, which may include one or more of the types of disciplinary sanctions provided by 191—Chapter 106, Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, or 2008 Iowa Acts, Senate File 2349 and House File 2555. The order shall be a public record, available to the public, and may be disseminated in accordance with Iowa Code chapter 22.

103.6(5) A request for voluntary forfeiture of a license shall be made in writing to the commissioner. Forfeiture of a license is effective upon submission of the request unless a contested case proceeding is pending at the time the request is submitted. If a contested case proceeding is pending at the time of the request, the forfeiture becomes effective when and upon such conditions as required by order of the commissioner. A forfeiture made during the pendency of a contested case proceeding is considered disciplinary action and shall be published in the same manner as is applicable to any other form of disciplinary order.

103.6(6) A license may be voluntarily forfeited in lieu of compliance with an order of the commissioner with the written consent of the commissioner. The forfeiture becomes effective when and upon such conditions as required by order of the commissioner, which may include one or more of the types of disciplinary sanctions provided by 191—Chapter 106, Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, or 2008 Iowa Acts, Senate File 2349 and House File 2555.

103.6(7) When a preneed seller’s license has been suspended for a period of time which extends beyond the preneed seller’s license expiration date, the license will terminate on the license expiration date, and the preneed seller must apply for a new license. If suspension for a period of time ends prior to the preneed seller’s license expiration date, the commissioner shall reinstate the license at the end of the

suspension period. The commissioner is not prohibited from bringing an additional immediate action if the preneed seller has engaged in misconduct during the period of suspension.

191—103.7(252J) Suspension for failure to pay child support.

103.7(1) Upon receipt of a certificate of noncompliance from the child support recovery unit (CSRU), the commissioner shall issue a notice to the sales agent that the sales agent's pending application for licensure, pending request for renewal, or current license will be suspended 30 days after the date of the notice. Notice shall be sent to the sales agent's last-known address by regular mail.

103.7(2) The notice shall contain the following items:

a. A statement that the commissioner intends to suspend the sales agent's application, request for renewal or current insurance license in 30 days;

b. A statement that the sales agent must contact the CSRU to request a withdrawal of the certificate of noncompliance;

c. A statement that the sales agent's application, request for renewal or current license will be suspended if the certificate of noncompliance is not withdrawn;

d. A statement that the sales agent does not have a right to a hearing before the commissioner, but that the sales agent may file an application for a hearing in district court pursuant to Iowa Code section 252J.9;

e. A statement that the filing of an application with the district court will stay the proceedings of the commissioner;

f. A copy of the certificate of noncompliance.

103.7(3) The filing of an application for hearing with the district court will stay all suspension proceedings until the commissioner is notified by the district court of the resolution of the application.

103.7(4) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the CSRU or a notice from a clerk of court that an application for hearing has been filed, the commissioner shall suspend the sales agent's application, request for renewal or current license 30 days after the notice is issued.

103.7(5) Upon receipt of a withdrawal of the certificate of noncompliance from the CSRU, suspension proceedings shall halt, and the named sales agent shall be notified that the proceedings have been halted. If the sales agent's license has already been suspended, the license shall be reinstated if the sales agent is otherwise in compliance with rules issued by the commissioner. All fees required for license renewal or license reinstatement must be paid by sales agents, and all continuing education requirements must be met before a sales agent license will be renewed or reinstated after a license suspension or revocation pursuant to this subrule.

191—103.8(261) Suspension for failure to pay student loan.

103.8(1) The commissioner shall deny the issuance or renewal of a sales agent license upon receipt of a certificate of noncompliance from the college student aid commission (CSAC) according to the procedures set forth in Iowa Code sections 261.126 and 261.127. In addition to the procedures contained in those sections, this rule shall apply.

103.8(2) Upon receipt of a certificate of noncompliance from the CSAC according to the procedures set forth in Iowa Code sections 261.126 and 261.127, the commissioner shall issue a notice to the sales agent that the sales agent's pending application for licensure, pending request for renewal, or current license will be suspended 60 days after the date of the notice. Notice shall be sent to the sales agent's last-known address by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or licensed sales agent may accept service personally or through authorized counsel.

103.8(3) The notice shall contain the following items:

a. A statement that the commissioner intends to deny the sales agent's application or request for renewal or suspend the sales agent's license in 60 days;

b. A statement that the sales agent must contact the CSAC to request a withdrawal of the certificate of noncompliance;

c. A statement that the sales agent's application or request for renewal will be denied or the sales agent's license will be suspended if the certificate of noncompliance is not withdrawn or, if the current license is on suspension, a statement that the sales agent's license will be revoked;

d. A statement that the sales agent does not have a right to a hearing before the commissioner, but that the sales agent may file an application for a hearing in district court pursuant to Iowa Code section 261.127;

e. A statement that the filing of an application with the district court will stay the proceedings of the commissioner;

f. A copy of the certificate of noncompliance.

103.8(4) The effective date of revocation or suspension of a sales agent license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days after service of the notice upon the sales agent.

103.8(5) In the event an applicant or licensed sales agent timely files a district court action pursuant to Iowa Code section 261.127, the commissioner's suspension proceedings will be stayed until the commissioner is notified by the district court of the resolution of the application. Upon receipt of a court order lifting the stay, or otherwise directing the commissioner to proceed, the commissioner shall continue with the intended action described in the notice. For purposes of determining the effective date of the denial of the issuance or renewal of a sales agent license, the commissioner shall count the number of days before the action was filed and the number of days after the court disposed of the action.

103.8(6) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the CSAC or a notice from a clerk of court that an application for hearing has been filed, the commissioner shall suspend the sales agent's application, request for renewal or current sales agent license 60 days after the notice is issued.

103.8(7) Upon receipt of a withdrawal of the certificate of noncompliance from the CSAC, suspension proceedings shall halt and the named sales agent shall be notified that the proceedings have been halted. If the sales agent's license has already been suspended, the license shall be reinstated if the sales agent is otherwise in compliance with rules issued by the commissioner. All fees required for license renewal or license reinstatement must be paid by sales agents, and all continuing education requirements must be met before a sales agent license will be renewed or reinstated after a license suspension or revocation pursuant to Iowa Code section 261.126.

103.8(8) The commissioner shall notify the sales agent in writing through regular first-class mail, or such other means as the commissioner deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a sales agent license, and shall similarly notify the sales agent when the sales agent's license is reinstated following the commissioner's receipt of a withdrawal of the certificate of noncompliance.

103.8(9) Notwithstanding any statutory confidentiality provision, the commissioner may share information with the CSAC for the sole purpose of identifying a sales agent subject to enforcement under Iowa Code chapter 261.

These rules are intended to implement Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.

ITEM 5. Rescind 191—Chapter 104 and adopt the following new chapter in lieu thereof:

CHAPTER 104
CONTINUING EDUCATION FOR SALES AGENTS

191—104.1(523A) Continuing education requirements. For each license term, each licensed sales agent shall be required to complete a minimum of eight credits of continuing education approved by the commissioner. At least two credits, to be known as the ethics and legal requirements continuing education requirement, must cover subjects relating to business ethics, the legal requirements of Iowa Code chapter 523A, 191—Chapters 100 through 106, and other relevant federal and state laws and rules, such as the Federal Trade Commission Funeral Rule (16 CFR Part 453).

191—104.2(523A) Acceptable areas of continuing education. The categories of acceptable continuing education include the following:

104.2(1) Ethical behavior related to the death care industry.

104.2(2) Good business practices and procedures related to funeral directors, funeral establishments, cremation establishments and cemeteries.

104.2(3) Legal compliance practices and procedures related to the death care industry, including the sale of funeral merchandise, funeral services, cemetery merchandise and purchase agreements subject to Iowa Code chapter 523A.

104.2(4) Funeral merchandise, funeral services and cemetery merchandise and the regulation of them.

104.2(5) Life insurance and annuity products and the regulation of them.

104.2(6) The Federal Trade Commission Funeral Rule (16 CFR Part 453).

104.2(7) Regulations from the Occupational Safety and Health Administration, the Americans with Disabilities Act and the Environmental Protection Agency.

104.2(8) The estate recovery program and regulations.

104.2(9) Mortuary science law, and public health and technical standards, requirements and issues regarding the handling and interment of deceased human remains.

104.2(10) Business management, accounting and record-keeping practices.

104.2(11) Computer equipment, systems and software.

104.2(12) Other subject areas as approved by the commissioner.

191—104.3(523A) Academic coursework.

104.3(1) Academic coursework that meets the criteria set forth in this chapter is acceptable.

104.3(2) Each credit hour of academic coursework successfully completed by a licensee shall be credited as 1.5 hours of continuing education. This multiplier shall be used only once per biennium for identical or substantially similar presentations.

104.3(3) Continuing education credit equivalents are as follows:

1 academic semester hour = 10 continuing education credits

1 academic trimester hour = 8 continuing education credits

1 academic quarter hour = 7 continuing education credits

191—104.4(523A) Effective date. Continuing education is a prerequisite for the renewal of any sales agent license for which a renewal application is filed on or after July 1, 2008.

191—104.5(523A) Compliance period. A sales agent's continuing education compliance period shall coincide with the sales agent's license term.

191—104.6(523A) Denial of sales agent license renewal application. The commissioner may deny a sales agent license renewal application that does not demonstrate compliance with the rules of this chapter.

191—104.7(523A) Disqualification and replacement of credits. If, as a result of a review, the commissioner determines that certain continuing education coursework does not qualify for credit, a sales agent may be given an opportunity to submit new credits to replace any credits that are not allowed.

191—104.8(523A) Current mailing address. A sales agent's failure to provide a current mailing address to the commissioner and the resulting failure to receive notices or letters from the commissioner regarding continuing education requirements and reporting shall not absolve the sales agent from the requirements of this chapter and shall not provide good cause for any waiver or exemption.

191—104.9(523A) Proof of completion of continuing education requirements. A sales agent is required to maintain a record of all completed continuing education courses by keeping for four years the original certificates of completion and a description and outline of the course attended.

191—104.10(523A) Standards for continuing education activities. A continuing education activity that meets all of the following criteria is appropriate for continuing education credit.

104.10(1) The activity constitutes an organized program of learning which contributes directly to the professional competency of the licensee;

104.10(2) The activity pertains to subject matters which integrally relate to the sale of funeral merchandise, funeral services, cemetery merchandise and purchase agreements subject to Iowa Code chapter 523A including, but not limited to, continuing education subject matter approved for funeral directors and insurance agents;

104.10(3) The activity is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program;

104.10(4) The activity fulfills stated program goals and objectives; and

104.10(5) The person conducting or sponsoring the activity provides proof of attendance to attendees.

191—104.11(523A) Qualifications of presenters and proof of attendance. Proof of attendance at a continuing education activity shall, at a minimum, include the following:

1. The date of the activity, the location of the activity, the course title, and the identity and qualifications of the presenter(s);
2. The number of program contact credits; and
3. A certificate of completion or evidence of successful completion of the course provided by the person conducting or sponsoring the activity.

191—104.12(523A) Reviews.

104.12(1) The commissioner may review licensees and persons conducting or sponsoring continuing education activities to ensure compliance with this chapter.

104.12(2) At the time of a review, the information requested from persons conducting or sponsoring continuing education activities shall include, but not be limited to, the following:

- a. The qualifications of presenters.
- b. Records documenting licensees' attendance at the activity.
- c. A course description.
- d. Official school transcripts indicating licensees' successful completion of an academic course.

104.12(3) Upon notice of a continuing education review, a sales agent shall provide the following information to the commissioner:

- a. The date and location of the course, course title, course description, course outline, course schedule, names and qualifications of the presenter(s), and the method of presentation or a program brochure or booklet which includes all the information required in this paragraph;
- b. The number of contact credit hours attended; and
- c. The individual certificate of completion issued or evidence of successful completion of the course from the person conducting or sponsoring the continuing education activity.

191—104.13(523A) Exemption. This rule does not apply to a licensed funeral director or licensed insurance sales agent.

These rules are intended to implement Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.

ITEM 6. Rescind 191—Chapter 105 and adopt the following **new** chapter in lieu thereof:

CHAPTER 105
STANDARDS OF CONDUCT AND PROHIBITED PRACTICES

191—105.1(523A) Purpose. This chapter is intended to establish certain minimum standards and guidelines of conduct for preneed sellers and sales agents by identifying required actions and prohibited acts or practices.

191—105.2(523A) Numbering purchase agreements. Preneed sellers shall assign numbers, in sequential order, to each purchase agreement sold during a calendar year.

105.2(1) Prenumbered contracts are not required. If a contract is not prenumbered, the sales agent shall write the contract number on the purchase agreement at the time it is executed.

105.2(2) The copy of the purchase agreement given to the purchaser shall include the contract number assigned to the purchase agreement.

105.2(3) If a correction to the contract number is required, the correction shall be recorded in the sales logs required by subrule 105.3(3), and documentation that retains evidence of the initial number used shall be maintained.

105.2(4) A numbering system that consists of a two-part number separated by a hyphen would satisfy this rule. The first portion of the number would be the date the contract was written. The second portion of the number would be sequential and indicate the number of contracts executed by the preneed seller, to date, in the applicable calendar year. A preneed seller with multiple locations may use a prefix to identify each location by number. A preneed seller with multiple sales agents may use a numerical suffix to identify the sales agent.

191—105.3(523A) Records maintenance.

105.3(1) *Transaction records to be kept by preneed sellers.* A preneed seller shall document all customer transactions and maintain accurate copies and records of all purchase agreements. If no other legal provision governs record retention, a preneed seller shall keep all customer records for a minimum of three years after the date of the death of the beneficiary. The preneed seller shall keep records and the identity of individuals in the records confidential.

105.3(2) *Deposit records to be kept by preneed sellers.* If purchase payments made to a preneed seller are commingled and deposited with funds not related to a purchase agreement subject to Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, or if deposits involve more than one purchase agreement, the preneed seller shall retain a detailed summary of each deposit. This information shall be maintained and shall be available for inspection by the commissioner for a minimum of four years after the deposit.

105.3(3) *Sales log to be kept by preneed sellers.* Preneed sellers shall maintain a sales log for purposes of assigning numbers to purchase agreements. The sales log shall be maintained for a minimum of four years after the date of sale.

105.3(4) *Sales log to be kept by sales agents.* A sales agent shall maintain a sales log for a minimum of four years. The sales log shall include all of the information required for the sales agent's annual report set forth in subrule 105.4(2).

191—105.4(523A) Annual reports.

105.4(1) *Annual reports by preneed sellers.* A licensed preneed seller shall file a completed annual report form with the commissioner on or before April 1 each year. The form and instructions may be obtained through the commissioner's Web site. The report shall include a list of contracts sold during the year covered by the report, including the date of each contract, the total purchase price, the name of the purchaser, the name of the beneficiary and, for each contract sold after July 1, 2007, the number assigned to the contract. Along with submitting the report, the preneed seller shall submit a filing fee, as set forth in Iowa Code Supplement section 523A.204.

105.4(2) *Annual reports by sales agents.* A licensed sales agent shall file a completed annual report form with the commissioner on or before April 1 each year, pursuant to Iowa Code Supplement section 523A.502A. The form and instructions may be obtained through the commissioner's Web site. The report shall include the following:

- a. Names of applicable licensed preneed sellers and their license numbers; and

b. A list of contracts sold during the year covered by the report, including the date of the contract, the total purchase price, the name of the purchaser and the name of the beneficiary and, for each contract sold after July 1, 2007, the number assigned to each contract. If the sales agent was appointed by more than one preneed seller, the list of contracts required by this paragraph shall be divided according to each preneed seller.

105.4(3) *Failure to file timely.* If a preneed seller or sales agent fails to file an annual report as required by this subrule on or before the date the annual report is due, the penalties of 191—subrule 106.2(3) shall apply. Additional sanctions pursuant to rule 105.6(523A) and 191—Chapter 106 also may be imposed.

191—105.5(523A) Fidelity bond or insurance. A preneed seller shall obtain and maintain a fidelity bond or similar insurance in an amount not less than \$50,000 to protect against the loss of purchaser payments not placed in trust, as required by Iowa Code Supplement section 523A.201(5) unless the preneed seller only uses the trusting alternatives set forth in Iowa Code Supplement section 523A.401 as amended by 2008 Iowa Acts, House File 2555, section 44; Iowa Code Supplement section 523A.402 as amended by 2008 Iowa Acts, House File 2555, section 45; Iowa Code section 523A.403; Iowa Code Supplement section 523A.404; and Iowa Code Supplement section 523A.405 as amended by 2008 Iowa Acts, Senate File 2349, section 4, and House File 2555, section 46, or unless the preneed seller deposits 100 percent of each payment into a trust fund. This requirement may be satisfied by a cash deposit held and administered in trust for the benefit and protection of purchasers and beneficiaries in this state, pursuant to a trust agreement filed with and acceptable to the commissioner.

191—105.6(523A) Grounds for discipline. The commissioner may impose sanctions as set forth in 191—Chapter 106 if the commissioner finds that a licensee or that an owner, partner, member, director, shareholder or manager of a licensed business entity has violated or failed to comply with Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, 2008 Iowa Acts, Senate File 2349 and House File 2555, or any associated rules or implementing orders, including but not limited to the following acts or practices:

105.6(1) *Fraudulent or deceptive applications.* Engaging in fraudulent or deceptive acts in procuring a license, including but not limited to:

- a. False representations of a material fact, whether by conduct or by false or misleading statements;
- b. Concealing or omitting anything that should have been disclosed or included with the application;
- c. Filing a false identification;
- d. Filing an untrue certification or affidavit; or
- e. Falsifying documents.

105.6(2) *Conviction of a criminal offense.* Conviction of a criminal offense, in any jurisdiction, involving dishonesty or a false statement, including but not limited to fraud, theft, misappropriation of funds, falsification of documents, deceptive acts or practices, or other related offenses. “Conviction” shall include a plea of guilty or a finding of guilt, and shall include a deferred judgment.

105.6(3) *Fraudulent or deceptive practices.* Engaging in any act or practice that violates Iowa Code section 523A.701 or 523A.702, or Iowa Code Supplement section 523A.703, whether or not actual harm or injury occurs, including but not limited to:

- a. Making untrue or improbable statements in advertisements;
- b. Falsifying business records; or
- c. Misappropriating funds.

105.6(4) *Insolvency or financial condition.* Being or becoming insolvent or of unsound financial condition, the determination of which shall be based on but not limited to the following factors:

- a. The licensee’s or license applicant’s net worth;
- b. Whether a financial institution has closed or otherwise taken adverse action against an account held by or on behalf of the licensee or license applicant;

- c. The issuance by the licensee or license applicant of insufficient funds checks or otherwise overdrawing a business or trust account;
- d. Untimely payment by the licensee or license applicant of business obligations in a manner that threatens the operation of the business;
- e. Untimely placement by the licensee of consumer funds into trust;
- f. Failure of the licensee or license applicant to pay sales, unemployment or other tax owed in the course of business; or
- g. Any other act, practice or omission that provides a reasonable basis to question the ability of the licensee or license applicant to comply with the requirements of Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, and related regulations.

105.6(5) *Unethical, harmful or detrimental conduct.* Engaging in any act or practice which may be harmful or detrimental to the public, whether or not actual harm or injury occurs, while engaged in activities regulated by Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, or materially related to such activity, including but not limited to:

- a. Encouraging cancellation of a purchase agreement if not in the best interests of the beneficiary;
- b. Failure to leave a residence when requested to do so;
- c. Intimidation or physical abuse, including improper sexual contact or conduct; or
- d. Any other act or practice that takes unfair or unreasonable advantage of the vulnerability of a client or prospective client based on age, poor health, infirmity, impaired understanding, restricted mobility, or disability.

105.6(6) *Failure to maintain records.* Failure to maintain records as required by Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559, or any associated rules or orders.

105.6(7) *Failure to cooperate with an examination or investigation.* Failure to submit to an examination, failure to comply with a reasonable written request of an examiner, or failure to cooperate with an investigation conducted by the commissioner as required by Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, 2008 Iowa Acts, Senate File 2349 and House File 2555, or any associated rules or orders.

105.6(8) *Late filings or the failure to submit a report.* Filing reports after the filing deadline or failing to file a report as required by Iowa Code chapter 523A or any associated rules or orders.

105.6(9) *Inability to perform.* A preneed seller's failing to be able to provide the cemetery merchandise, funeral merchandise, funeral services, or combination thereof which the licensee purports to sell, including but not limited to failing to employ or have a contractual arrangement with at least one person who is licensed to perform mortuary science services, as described in Iowa Code chapter 156.

105.6(10) *Sale of business without notice.* Selling all or part of a licensee's business without proper notice to the commissioner, pursuant to rule 191—103.3(523A).

105.6(11) *Improper sale or transfer of purchase agreements.* Selling or transferring purchase agreements as part of the sale of a business or the assets of a business, if an audit expressing the auditor's opinion of the adequacy of funding related to the purchase agreements to be sold or transferred has not been performed by a certified public accountant and filed with the commissioner, as required by Iowa Code Supplement section 523A.207.

105.6(12) *Sales prohibited by order.* The applicant or licensee has been named in an order issued pursuant to Iowa Code Supplement section 523A.807(3) as amended by 2008 Iowa Acts, House File 2555, section 52.

105.6(13) *Failure to complete continuing education.* Failure of a licensee to timely complete the continuing education required for license renewal.

105.6(14) *Law violations.* Violating any state or federal law applicable to the conduct of the applicant's or licensee's business including, but not limited to, the following:

- a. The provisions of Iowa Code chapter 156 pertaining to the licensure of funeral directors in the state of Iowa;
- b. Regulations promulgated by the Federal Trade Commission relating to funeral services, or funeral or cemetery merchandise, or funeral or cremation establishments;

- c. Applicable tax or public health laws, ordinances or regulations; or
- d. Laws, rules, ordinances, or regulations occurring outside of Iowa if the commissioner determines that such violation may adversely implicate the licensee's or applicant's compliance with Iowa laws, rules, orders, ordinances, or regulations.

105.6(15) *Unsafe practice.* Having any impairment, drug or alcohol addiction, or other act, conduct or condition which adversely impacts the licensee's ability to perform in a safe, competent manner.

105.6(16) *Failure to maintain fidelity bond or similar insurance.* A preneed seller's failure to maintain a fidelity bond or similar insurance as required by rule 105.5(523A) and Iowa Code Supplement section 523A.201(5).

105.6(17) *Responsibility for sales activities of others.* A preneed seller's consent or acquiescence to violation of 191—Chapters 100 through 106, Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, or 2008 Iowa Acts, Senate File 2349 and House File 2555, by any person acting on the preneed seller's behalf.

191—105.7(523A) Prohibition on sales activities and practices without a license or without an appointment.

105.7(1) *License required.* No person shall advertise, sell, promote, or offer to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than 100 days following the initial payment of the account unless the person either:

- a. Holds an active preneed seller license issued by the commissioner pursuant to Iowa Code Supplement section 523A.501 as amended by 2008 Iowa Acts, Senate File 2349, sections 5 and 6, and House File 2555, section 48; or

- b. Holds an active sales agent license issued by the commissioner pursuant to Iowa Code Supplement section 523A.502 as amended by 2008 Iowa Acts, Senate File 2349, section 7, and House File 2555, sections 49 and 50, and the person is an appointed sales agent of a person holding a preneed seller license issued by the commissioner pursuant to Iowa Code Supplement section 523A.501 as amended by 2008 Iowa Acts, Senate File 2349, sections 5 and 6, and House File 2555, section 48.

105.7(2) *Prohibited activities.* A person to whom a license has not been issued by the commissioner, a licensee whose license has expired, is inactive, or is suspended, or a sales agent who is not appointed by a preneed seller, may not:

- a. Conduct any of the activities for which a license is required pursuant to Iowa Code chapter 523A or rule 191—103.1(523A);

- b. Post or display the licensee's license;

- c. Use a license certificate or a license number;

- d. Agree to perform any term of an agreement, whether or not pursuant to a written purchase agreement, to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, if the sale of the merchandise or services is subject to Iowa Code chapter 523A and the sale is after the renewal date of the license;

- e. Execute an agreement or agree to perform any term of an agreement or, unless the agreement was entered into while the licensee had an active license issued by the commissioner, accept any payment or funding, including the assignment of ownership of or proceeds from an insurance policy or annuity, whether or not pursuant to a written purchase agreement, related to the purchase of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, if the sale of the merchandise or services is subject to Iowa Code chapter 523A and the sale is after the renewal date of the license. This rule does not prevent payments to an unlicensed person upon the person's delivery of cemetery merchandise, funeral merchandise or funeral services after the death of a beneficiary, including the payment of the proceeds of an insurance policy or annuity at the time of death of the insured listed on the insurance policy or annuity.

These rules are intended to implement Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.

ITEM 7. Rescind 191—Chapter 106 and adopt the following **new** chapter in lieu thereof:

CHAPTER 106
DISCIPLINARY PROCEDURES

191—106.1(523A) Investigations. The commissioner is authorized by Iowa Code section 17A.13(1) and Iowa Code Supplement section 523A.803 to conduct such investigations as the commissioner deems necessary to determine whether any person has violated or is about to violate Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555. The commissioner is authorized to issue and enforce subpoenas to compel testimony and to compel the production of books and records, as more fully described in Iowa Code Supplement section 523A.803. Upon the commissioner's determination that probable cause exists to commence a disciplinary proceeding, the procedures contained in 191—Chapter 3 shall apply.

191—106.2(17A,523A) Penalties. Persons violating Iowa Code chapter 523A or rules adopted or orders issued pursuant thereto may be subject to one or more of the following penalties.

106.2(1) Criminal penalties. A person who willfully violates Iowa Code Supplement section 523A.501(1), concerning the requirement for a preneed seller license, or Iowa Code Supplement section 523A.502(1), concerning the requirement for a sales agent license, is guilty of a Class D felony. Licensed and unlicensed persons who violate other provisions of Iowa Code chapter 523A and rules adopted or orders issued pursuant to Iowa Code chapter 523A including, but not limited to, a failure to properly place trust funds into trust, pursuant to Iowa Code Supplement sections 523A.201, 523A.202, and 523A.404, and Supplement section 523A.405 as amended by 2008 Iowa Acts, Senate File 2349, section 4, and House File 2555, section 46, are subject to prosecution for crimes including, but not limited to, fraudulent practice under Iowa Code Supplement section 523A.703, theft under Iowa Code chapter 714, or ongoing criminal conduct under Iowa Code chapter 706A. 191—Chapters 100 through 106 do not limit the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

106.2(2) Consumer fraud Act. A violation by a licensed or unlicensed person of Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, 2008 Iowa Acts, Senate File 2349 and House File 2555, 191—Chapters 100 through 106, or an order issued pursuant to those chapters, is a violation of the Iowa consumer fraud Act, Iowa Code sections 714.16 and 714.16A.

106.2(3) Administrative sanctions.

a. Pursuant to Iowa Code Supplement sections 523A.204(4) and 523A.502A, the failure of a licensee to timely file an annual report shall result in an administrative penalty of \$500. The license is suspended on the date the annual report was due until the overdue report is filed and the administrative penalty paid. The licensee is not authorized to solicit or execute any purchase agreement under Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, until the license has been reinstated.

b. If the commissioner issues or renews a license and subsequently determines that payment for the license or renewal was returned by a bank without payment to the commissioner, or that the credit card company does not approve or cancels or refuses amounts charged to the credit card, the license shall be immediately suspended until the payments are made and any fees or penalties charged by the commissioner are paid, at which time the license may be reinstated at the request of the applicant.

c. If the commissioner issues or renews a sales agent license and subsequently determines that the sales agent is not appointed by a preneed seller, the license shall be immediately suspended until the sales agent obtains such an appointment and provides satisfactory evidence to the commissioner of the appointment, at which time the license may be reinstated at the request of the sales agent.

d. The commissioner may impose the following disciplinary sanctions, alone or in combination, against a licensee or as a condition of licensure of an applicant for an initial or renewal license:

- (1) Issue a warning letter or a letter of reprimand;
- (2) Require additional education or training;
- (3) Order mediation pursuant to Iowa Code Supplement section 523A.804;

- (4) Issue a cease and desist order pursuant to Iowa Code section 523A.805 or Iowa Code Supplement section 523A.807 as amended by 2008 Iowa Acts, House File 2555, section 52;
- (5) Require certain specified procedures or methods of operation;
- (6) Order the payment of consumer restitution;
- (7) Place a licensee on probationary status with or without the imposition of reasonable conditions to control or monitor conduct, such as periodic reports;
- (8) Refuse to issue or renew a license;
- (9) Suspend a license for an indefinite or specific period of time;
- (10) Revoke a license;
- (11) Accept the voluntary surrender of a license;
- (12) Impose costs associated with the commissioner's investigation and enforcement activities;
- (13) Impose civil penalties pursuant to Iowa Code Supplement section 523A.807 as amended by 2008 Iowa Acts, House File 2555, section 52, for violation of Iowa Code Supplement section 523A.201 or 523A.202; Iowa Code Supplement section 523A.401 as amended by 2008 Iowa Acts, House File 2555, section 44; Iowa Code Supplement section 523A.402 as amended by 2008 Iowa Acts, House File 2555, section 45; Iowa Code section 523A.403; Iowa Code Supplement section 523A.404; Iowa Code Supplement section 523A.405 as amended by 2008 Iowa Acts, Senate File 2349, section 4, and House File 2555, section 46; Iowa Code Supplement section 523A.501 as amended by 2008 Iowa Acts, Senate File 2349, sections 5 and 6, and House File 2555, sections 47 and 48; or Iowa Code Supplement section 523A.502 as amended by 2008 Iowa Acts, Senate File 2349, section 7, and House File 2555, sections 49 and 50;
- (14) Any other sanction allowed by law, as the commissioner deems appropriate.

e. A person with an inactive, expired, or suspended license is subject to disciplinary action, injunctive action, criminal sanctions and any other available legal remedies in the event of any violation of Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, 2008 Iowa Acts, Senate File 2349 and House File 2555, or any rules or orders adopted thereto.

f. In addition, or as an alternative to the administrative process described in these rules, the commissioner may seek an injunction in district court, refer the matter for criminal prosecution, enter into a consent agreement, issue an informal cautionary letter, refer the matter to the attorney general, or refer the matter to a licensing entity with regulatory authority and jurisdiction over the unlicensed person, such as the mortuary science board established under Iowa Code chapter 156.

g. The following factors may be considered by the commissioner in determining the nature and severity of the disciplinary sanction to be imposed:

- (1) The facts of the particular violation, such as the circumstances leading to the violation, the severity of the infraction, and the clarity of the issues, laws and rules involved;
- (2) Evidence that the infraction is not an isolated event and is part of a widespread practice;
- (3) Evidence that the acts or practices were willful and intentional;
- (4) The economic benefits gained by the licensee or applicant as a result of the infraction;
- (5) Evidence that the infraction occurred while the licensee was on probation or had an inactive or suspended license;
- (6) The number of prior warning letters or reprimand letters;
- (7) The number of complaints;
- (8) The number of prior violations, especially evidence of repetitive violations of a like kind;
- (9) The seriousness of prior complaints or violations;
- (10) The length of time since the unlawful practice occurred;
- (11) Whether the violation involved an element of deception;
- (12) Whether the unlawful practice violated a prior order of the commissioner, court order, cease and desist agreement, consent order, or similar document;
- (13) Whether the person acted in bad faith;
- (14) The extent to which the licensee or applicant cooperated with the commissioner;
- (15) Evidence of reform or remedial action and whether reform or remedial action occurred prior to the commissioner's involvement with the fact situation;

- (16) The amount of restitution paid or to be paid;
- (17) The risk of harm created by the acts or practices involved in the infraction;
- (18) The public interest in ensuring competency and a high standard of ethical and professional conduct by licensees;
- (19) The public interest in protecting consumers and preventing the acts or practices involved in the infraction;
- (20) Whether the penalty will act as a substantial deterrent and reduce the likelihood of future violations; and
- (21) Any other extenuating facts or other countervailing considerations.

191—106.3(17A,523A) Administrative procedures.

106.3(1) Notice of sanctions. If the commissioner finds cause to impose a sanction against a person pursuant to Iowa Code chapter 523A or subrule 106.2(3), the commissioner shall provide notice to the person. Delivery of the notice shall be accomplished in the manner set out in 191—paragraphs 3.5(1) “a” and “b.” The notice shall include the following:

- a. A statement of the legal authority and jurisdiction under which the order would be issued;
- b. Reference to the particular sections of the statutes and rules involved;
- c. A short, plain statement of the alleged unlawful practices;
- d. The dollar amount of the proposed civil penalty and the nature of the intended order to require compliance with Iowa Code chapter 523A, including any required restitution;
- e. Notice of the unlicensed person’s right to a hearing and the time frame in which hearing must be requested; and
- f. The address to which written request for hearing must be made.

106.3(2) Requesting a hearing regarding sanctions imposed. If the commissioner imposes any administrative sanctions against a person pursuant to Iowa Code chapter 523A or subrule 106.2(3), the person may request a hearing pursuant to 191—Chapter 3 within 30 days of receipt of the notice. Applicable procedures of this chapter, of 191—Chapter 3, and of Iowa Code chapter 17A shall apply. A failure to timely request a hearing shall constitute a failure to exhaust administrative remedies. A request for hearing must be in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal delivery to the commissioner’s office.

106.3(3) If a request for hearing is not timely made, the commissioner may issue an order imposing the administrative penalty and requiring compliance with Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, as described in the notice. The order may be served in the same manner as the notice of intent to impose administrative penalty, and may additionally be provided in a manner reasonably calculated to provide actual notice.

106.3(4) If a request for hearing is timely made, the commissioner shall issue a notice of hearing, following the procedures applicable to a contested case in 191—Chapter 3. Hearings are open to the public.

106.3(5) A person may waive the right to hearing and all attendant rights and enter into a consent order imposing an administrative penalty and requiring compliance with Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, at any stage of the proceeding upon mutual consent of the commissioner.

106.3(6) The notice of intent to issue an order and the order are public records available for inspection and copying in accordance with Iowa Code chapter 22.

106.3(7) A person aggrieved by the commissioner’s issuance of an administrative order, including an order imposing a civil penalty, may seek judicial review in accordance with Iowa Code section 17A.19.

These rules are intended to implement Iowa Code chapters 17A, 22, and 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.